

# EXHIBIT 7

Brian H. Polovoy (BP 4723)  
Karen Hart (KH 5518)  
SHEARMAN & STERLING LLP  
599 Lexington Avenue  
New York, NY 10022-6069  
Telephone: (212) 848-4000

Attorneys *Pro Se*

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

NETFLIX, INC., a Delaware Corporation,	)	
	)	
Plaintiff,	)	No. C 06 2361 WHA (JCS)
v.	)	(pending in Northern District of California)
	)	
BLOCKBUSTER, INC., a Delaware	)	
Corporation, Does 1-50,	)	
	)	
Defendants.	)	
	)	

**OBJECTIONS AND RESPONSES OF NON-PARTY SHEARMAN & STERLING LLP**

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, non-party Shearman & Sterling LLP ("Shearman & Sterling") hereby objects and responds as follows to Plaintiff's subpoena dated April 4, 2007 (the "Subpoena").

Shearman & Sterling makes this response without in any way waiving or intending to waive, but to the contrary, intending to reserve and reserving:

- (1) all questions as to competency, relevancy, materiality, privilege, and admissibility as evidence for any purpose, at any trial or hearing in this case or in any related or subsequent action or proceeding, if any, of any of the documents produced hereunder or the subject matter thereof;
- (2) the right to object on any ground to the use of documents produced hereunder or the subject matter thereof, at any trial or hearing in this case or in any related or subsequent action or proceeding;
- (3) the right to object on any ground at any time to a demand for further responses or document production; and

(4) the right at any time to revise, supplement, correct, or add to this response.

Shearman & Sterling will limit its production subject to and without waiver of the general and specific objections set forth herein.

### **GENERAL OBJECTIONS**

1. Shearman & Sterling objects to the Subpoena to the extent that it seeks information or documents that are protected by the attorney-client privilege or the attorney work product doctrine, that were prepared in anticipation of litigation, that constitute or disclose mental impressions, conclusions, opinions, or legal theories of any attorney of Shearman & Sterling concerning this or any other litigation, that are protected by the privilege of self-critical analyses, any pertinent statutes dealing with privacy rights, or by any other privilege or doctrine. Such documents will not be produced. Shearman & Sterling similarly objects to Subpoena's request for testimony pursuant to Rule 30(b)(6) because Plaintiff's "Matters Upon Which Examination [is] Requested" seek privileged information and communications. Accordingly, Shearman & Sterling cannot produce a Rule 30(b)(6) witness on the matters requested.

2. Shearman & Sterling objects to the Subpoena to the extent that it is overbroad, vague, ambiguous, capable of multiple interpretations, and otherwise seeks documents that are not relevant to the claims or defenses in this action or calculated to lead to the discovery of admissible evidence.

3. Shearman & Sterling objects to the Subpoena to the extent that it imposes an undue burden and expense on Shearman & Sterling.

4. Shearman & Sterling objects to the Subpoena to the extent that it purports to require Shearman & Sterling to produce documents outside its possession, custody or control.

5. Shearman & Sterling objects to the Subpoena to the extent that it calls for the production of documents concerning transactions and events other than those related to this matter, and Shearman & Sterling will not produce such documents.

6. Shearman & Sterling objects to the Subpoena to the extent that it purports to impose obligations greater than those imposed by the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Southern District of New York.

7. Shearman & Sterling objects to the Subpoena to the extent that it calls for the production of documents that are publicly available.

8. Shearman & Sterling objects to the Subpoena to the extent that it calls for documents that have already been or are designated to be provided to Plaintiff by any party or subpoenaed non-party in this litigation.

9. Shearman & Sterling objects to the Subpoena to the extent that it would require the production of documents or information as to which Shearman & Sterling owes a duty of non-disclosure to a third party.

10. Shearman & Sterling objects to the Subpoena to the extent that it seeks documents that contain, reflect, refer or relate to confidential or proprietary information and/or trade secrets.

11. Shearman & Sterling objects to the Subpoena to the extent that it requires the production of documents absent the entry of a confidentiality stipulation or order protecting the confidentiality of documents that may be produced. Shearman & Sterling will only produce confidential documents subject to the terms of a mutually agreeable confidentiality stipulation or order.

12. Shearman & Sterling objects to the Subpoena to the extent that it calls for information that was not generated in the form of written or printed records or that calls for Shearman & Sterling to create or re-create printouts from electronic data compilations, on the ground that such electronic information is not reasonably accessible because of undue burden or cost. Such documents will not be produced.

13. Shearman & Sterling expressly reserves any rights to apply for any costs incurred in complying with the Subpoena.

14. The specific responses set forth below are based upon information now available to Shearman & Sterling, and Shearman & Sterling reserves the right at any time to amend or supplement these responses and objections.

15. Any decision by Shearman & Sterling to provide any documents or information notwithstanding the objectionable nature of any part of the Subpoena should not be construed as a stipulation that the material is discoverable, a waiver of Shearman & Sterling objections, or an agreement that requests for similar discovery will be treated in a similar manner.

16. Any response or objection to the Subpoena does not mean necessarily that any documents exist or are in the possession, custody, or control of Shearman & Sterling that are responsive to any specific category of documents demanded by the Subpoena.

17. Shearman & Sterling's failure to object to a Request in the Subpoena on a particular ground shall not be construed as any waiver of its right to object on that ground or any additional grounds.

18. Any inadvertent production of any document shall not be deemed or construed to constitute a waiver of any rights or privilege and Shearman & Sterling reserves the

right to demand that the Plaintiff or any other person in possession of such a document, return to it any such document, and all copies thereof, and that the Plaintiff or any other person, destroy any materials that contain information derived from any such document.

19. The objections set forth above are hereby incorporated in each specific response set forth below, as if fully set forth therein, and shall be deemed to be continuing even though not specifically referred to. No such objection is waived by Shearman & Sterling responding to a Request in whole or in part.

#### **OBJECTIONS TO INSTRUCTIONS AND DEFINITIONS**

1. Shearman & Sterling objects to the Instructions and Definitions in the Subpoena to the extent that they purport to define terms differently than those terms are defined by the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the Southern District of New York or any other applicable law or rule.

2. Shearman & Sterling objects to the definitions of "You," "Your," and "Shearman" on the grounds that they are vague and overbroad. Shearman & Sterling will construe the terms "You," "Your," and "Shearman" to refer to Shearman & Sterling and its partners and employees who records show were involved in matters relevant to this action. Shearman & Sterling objects to the Subpoena to the extent that they purport to seek the production of "all" documents on a particular subject. Shearman & Sterling will respond to the Subpoena based upon a reasonable search of the files of those partners and employees who records show were involved in matters relevant to this action.

3. Shearman & Sterling objects to the definitions of "documents," "communication," and "relating" to the extent that each definition is overbroad and unduly burdensome.

**RESPONSES AND OBJECTIONS TO SPECIFIC REQUESTS**

Request No. 1:

All documents relating to communications regarding the validity or invalidity of any claim of either of the Patents-in-Suit.

Response to Request No. 1:

Shearman & Sterling objects to this Request to the extent that it seeks documents that are protected by the attorney-client privilege, attorney work product doctrine or any other applicable privilege or doctrine. Shearman & Sterling further objects to this Request on the grounds that is vague, ambiguous, overbroad, unduly burdensome, and otherwise seeks documents that are not relevant to the claims or defenses in this action or calculated to lead to the discovery of admissible evidence. Shearman & Sterling further objects to this Request to the extent that it calls for documents that have already been, or are designated to be provided to Plaintiff by any party or subpoenaed non-party in this litigation. Subject to and without waiver of the foregoing general and specific objections, Shearman & Sterling will produce, at a mutually agreed upon time, non-privileged documents in its possession, custody or control, if any, that are responsive to this Request.

Request No. 2

All documents relating to any study, analysis, review, conclusion or opinion (including opinion of counsel) by either Shearman or any other person, whether written or oral, as to the validity or invalidity of any claim of either of the Patents-in-Suit, or to the research, investigation or preparation of any such document.

Response to Request No. 2:

Shearman & Sterling objects to this Request to the extent that it seeks documents that are protected by the attorney-client privilege, attorney work product doctrine or any other applicable privilege or doctrine. Shearman & Sterling further objects to this Request on the grounds that is vague, ambiguous, overbroad, unduly burdensome, and otherwise seeks

documents that are not relevant to the claims or defenses in this action or calculated to lead to the discovery of admissible evidence. Shearman & Sterling further objects to this Request to the extent that it calls for documents that have already been, or are designated to be provided to Plaintiff by any party or subpoenaed non-party in this litigation. Subject to and without waiver of the foregoing general and specific objections, Shearman & Sterling will produce at a mutually agreed upon time, non-privileged documents in its possession, custody or control, if any, that are responsive to this Request.

Dated: New York, New York  
April 18, 2007

SHEARMAN & STERLING LLP

By: 

Brian H. Polovoy (BP 4723)

Karen Hart (KH 5518)

599 Lexington Avenue

New York, New York 10022-6069

Telephone: (212) 848-4000

Attorneys *Pro Se*



# EXHIBIT 8

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

NETFLIX, INC., a Delaware corporation,  
Plaintiff,

v.

BLOCKBUSTER INC., a Delaware corporation,  
DOES 1-50,  
Defendant.

Case No. C 06 2361 WHA (JCS)

**OBJECTIONS AND RESPONSES OF NON-PARTY BAKER BOTTS, LLP  
TO NETFLIX'S NOTICE OF DEPOSITION**

Pursuant to Rule 45 of the Federal Rules of Civil Procedure, non-party Baker Botts, LLP ("Baker Botts") hereby objects and responds to Plaintiff and Counter-Defendant Netflix, Inc.'s ("Netflix") Subpoena dated April 3, 2007 ("Subpoena") as follows:

**GENERAL OBJECTIONS**

1. Baker Botts, a non-party to this suit, objects to the time and place of the deposition listed in the subpoena. The subpoena states the deposition will be held on April 24, 2007 at 9:30 a.m. at Figari & Davenport, LLP, 3400 Bank of America Plaza, 901 Main Street, Dallas, Texas. Netflix failed to consult with Baker Botts about a mutually agreeable date and location for the deposition. The witness is out of town on the day set for the deposition.

2. Baker Botts objects to the Subpoena to the extent that it seeks information or documents that are protected by the attorney-client privilege or the attorney work product doctrine, that were prepared in anticipation of litigation, that constitute or disclose mental impressions, conclusions, opinions, or legal theories of any attorney of Baker Botts concerning this or any other litigation, that are protected by the privilege of self-critical analyses, any pertinent statutes dealing with privacy rights, or by any other privilege or doctrine. Such documents will not be produced.

3. Baker Botts objects to the Subpoena to the extent that it is overbroad as to subject matter and time frame, vague, ambiguous, capable of multiple interpretations, and otherwise seeks documents that are not relevant to the claims or defenses in this action or calculated to lead to the discovery of admissible evidence.

4. Baker Botts objects to the Subpoena to the extent that it imposes an undue burden and expense.

5. Baker Botts objects to the Subpoena to the extent that it purports to require Baker Botts to produce documents outside its possession, custody or control.

6. Baker Botts objects to the Subpoena to the extent that it purports to impose obligations greater than those imposed by the Federal Rules of Civil Procedure.

7. The specific responses set forth below are based upon information now available to Baker Botts, and Baker Botts reserves the right at any time to amend or supplement these responses and objections.

8. Any response or objection to the Subpoena does not necessarily mean that any documents exist or are in the possession, custody, or control of Baker Botts that are responsive to any specific category of documents demanded by the Subpoena.

9. Baker Botts objects to the definitions of "You," "Your," and "Baker Botts" on the grounds that they are vague and overbroad. Baker Botts will construe the terms "You," "Your," and "Baker Botts" to refer to Baker Botts and its partners and employees who records show were involved in matters relevant to this action.

10. The objections set forth above are hereby incorporated in each specific response set forth below, as if fully set forth therein, and shall be deemed to be continuing even though not specifically referred to. No such objection is waived by Baker Botts responding to a Request in whole or in part.

#### **SPECIFIC RESPONSES AND OBJECTIONS TO EXAMINATION TOPICS**

##### **Examination Request No. 1:**

All COMMUNICATIONS between BAKER BOTTS and BLOCKBUSTER regarding

the validity or invalidity of any claim of either of the PATENTS-IN-SUIT.

**Response to Request No. 1:**

Baker Botts objects to this Request to the extent that it seeks information that is protected by the attorney-client privilege, attorney work product doctrine or any other applicable privilege or doctrine. Baker Botts further objects to this Request on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and otherwise seeks information that is not relevant to the claims or defenses in this action or calculated to lead to the discovery of admissible evidence.

Subject to and without waiver of the foregoing general and specific objections, Baker Botts will answer questions regarding the opinion provided to Blockbuster and communications, if any, with Blockbuster regarding the validity or invalidity of any claim of U.S. Patent No. 6,584,450.

**Examination Request No. 2:**

All studies, analyses, reviews, conclusions or opinions (including opinion of counsel) by either BAKER BOTTS or any other PERSON, whether written or oral, as to the validity or invalidity of any claim of either of the PATENTS-IN-SUIT.

**Response to Request No. 2:**

Baker Botts objects to this Request to the extent that it seeks information that is protected by the attorney-client privilege, attorney work product doctrine or any other applicable privilege or doctrine. Baker Botts further objects to this Request on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and otherwise seeks information that is not relevant to the claims or defenses in this action or calculated to lead to the discovery of admissible evidence.

Subject to and without waiver of the foregoing general and specific objections, Baker Botts will answer questions regarding the opinion provided to Blockbuster and communications, if any, with Blockbuster regarding the validity or invalidity of any claim of U.S. Patent No. 6,584,450.

**Examination Request No. 3:**

The efforts undertaken by BAKER BOTTS to preserve, retain, and locate DOCUMENTS responsive to this subpoena.

**Response to Request No. 3:**

Baker Botts objects to this Request to the extent that it seeks information that is protected by the attorney-client privilege, attorney work product doctrine or any other applicable privilege or doctrine. Baker Botts further objects to this Request on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and otherwise seeks information that is not relevant to the claims or defenses in this action or calculated to lead to the discovery of admissible evidence.

**Examination Request No. 4:**

The manner of keeping and authenticity of any DOCUMENTS produced pursuant to this subpoena.

**Response to Request No. 4:**

Baker Botts objects to this Request to the extent that it seeks information that is protected by the attorney-client privilege, attorney work product doctrine or any other applicable privilege or doctrine. Baker Botts further objects to this Request on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and otherwise seeks information that is not relevant to the claims or defenses in this action or calculated to lead to the discovery of admissible evidence.

**SPECIFIC RESPONSES AND OBJECTIONS TO DOCUMENT REQUESTS**

**Document Request No. 1:**

All DOCUMENTS RELATING TO COMMUNICATIONS regarding the validity or invalidity of any claim of either of the PATENTS-IN-SUIT.

**Response to Request No. 1:**

Baker Botts objects to this Request to the extent that it seeks documents that are protected by the attorney-client privilege, attorney work product doctrine or any other applicable privilege

or doctrine. Baker Botts further objects to this Request on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and otherwise seeks documents that are not relevant to the claims or defenses in this action or calculated to lead to the discovery of admissible evidence. Baker Botts also objects to this Request as seeking information already within the possession, custody or control of Netflix and to the extent that such information has already been produced to Netflix.

Subject to and without waiver of the foregoing general and specific objections, Baker Botts will produce documents that evidence communications between Blockbuster and Baker Botts regarding the validity or invalidity of any claim of U.S. Patent No. 6,584,450.

**Document Request No. 2:**

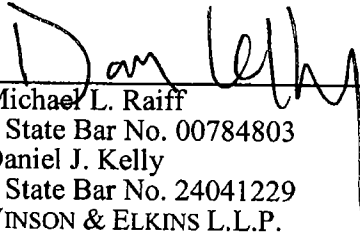
All DOCUMENTS RELATING TO any study, analysis, review, conclusion or opinion (including opinion of counsel) by either BAKER BOTTS or any other PERSON, whether written or oral, as to the validity or invalidity of any claim of either of the PATENTS-IN-SUIT, or to the research, investigation or preparation of any such DOCUMENT.

**Response to Request No. 2 :**

Baker Botts objects to this Request to the extent that it seeks documents that are protected by the attorney-client privilege, attorney work product doctrine or any other applicable privilege or doctrine. Baker Botts further objects to this Request on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and otherwise seeks documents that are not relevant to the claims or defenses in this action or calculated to lead to the discovery of admissible evidence. Baker Botts also objects to this Request as seeking information already within the possession, custody or control of Netflix and to the extent that such information has already been produced to Netflix.

Subject to and without waiver of the foregoing general and specific objections, Baker Botts will produce documents that evidence communications between Blockbuster and Baker Botts regarding the validity or invalidity of any claim of U.S. Patent No. 6,584,450.

DATED: April 18, 2007

  
\_\_\_\_\_  
Michael L. Raiff  
State Bar No. 00784803  
Daniel J. Kelly  
State Bar No. 24041229  
VINSON & ELKINS L.L.P.  
2001 Ross Avenue, Suite 3700  
Dallas, Texas 75201-2975  
Telephone: 214.220.7704  
Telecopy: 214.999.7704

**ATTORNEYS FOR NON-PARTY BAKER BOTTS, LLP**

**CERTIFICATE OF SERVICE**

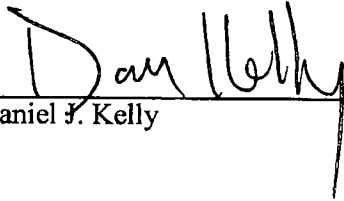
This is to certify that a true and correct copy of the above and foregoing has been served by the method identified below this 18th day of April, 2007:

Jeffrey Chanin  
Daralyn J. Durie  
KEKER & VAN NEST, LLP  
710 Sansome Street  
San Francisco, CA 94111-1704  
Attorneys for Plaintiff  
NETFLIX, INC.

*By Fax*

Marshall B. Grossman  
William J. O'Brien  
ALSCHULER GROSSMAN LLP  
1620 26<sup>th</sup> Street, 4<sup>th</sup> Floor, North Tower  
Santa Monica, CA 90404  
Attorneys for Defendant  
BLOCKBUSTER INC.

*By Fax*

  
\_\_\_\_\_  
Daniel J. Kelly

Dallas 1242806v1

# **EXHIBIT 9**



1 BINGHAM McCUTCHEN LLP  
Donn P. Pickett (Bar No. 72257)  
2 Adrienne L. Taclas (Bar No. 211232)  
Three Embarcadero Center  
3 San Francisco, CA 94111-4067  
Telephone: 415.393.2000  
4 Facsimile: 415.393.2286

5 BINGHAM McCUTCHEN LLP  
Mary T. Huser (Bar No. 136051)  
6 1900 University Avenue  
East Palo Alto, CA 94303-2223  
7 Telephone: 650.849.4400  
8 Facsimile: 650.849.4800

9 ALSCHULER GROSSMAN LLP  
Marshall B. Grossman (No. 35958)  
10 William J. O'Brien (No. 99526)  
Tony D. Chen (No. 176635)  
11 Dominique N. Thomas (No. 231464)  
The Water Garden  
12 1620 26th Street  
Fourth Floor, North Tower  
13 Santa Monica, CA 90404-4060  
Telephone: 310-907-1000  
14 Facsimile: 310-907-2000

15 Attorneys for Defendant and Counterclaimant  
16 BLOCKBUSTER INC.

17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA  
19

20 NETFLIX, INC., a Delaware corporation,  
21 Plaintiff,  
22 v.  
23 BLOCKBUSTER INC., a Delaware corporation,  
DOES 1-50,  
24 Defendant.

25  
26 AND RELATED COUNTER ACTION  
27  
28

Case No. C 06 2361 WHA (JCS)

**OBJECTIONS AND RESPONSES  
OF NON-PARTY BLAKELY,  
SOKOLOFF, TAYLOR &  
ZAFMAN, LLP**

SF/21710143.2/3006338-0000325413

1 Pursuant to Rule 45 of the Federal Rules of Civil Procedure, non-party Blakely,  
2 Sokoloff, Taylor & Zafman, ("Blakely") hereby objects and responds to Plaintiff and Counter-  
3 Defendant Netflix, Inc.'s ("Netflix") Amended Subpoena dated April 5, 2007 ("Subpoena") as  
4 follows:

5 **GENERAL OBJECTIONS**

6 1. Blakely objects to the Subpoena to the extent that it seeks information or  
7 documents that are protected by the attorney-client privilege or the attorney work product  
8 doctrine, that were prepared in anticipation of litigation, that constitute or disclose mental  
9 impressions, conclusions, opinions, or legal theories of any attorney of Blakely concerning this  
10 or any other litigation, that are protected by the privilege of self-critical analyses, any pertinent  
11 statutes dealing with privacy rights, or by any other privilege or doctrine. Such documents will  
12 not be produced.

13 2. Blakely objects to the Subpoena to the extent that it is overbroad as to  
14 subject matter and time frame, vague, ambiguous, capable of multiple interpretations, and  
15 otherwise seeks documents that are not relevant to the claims or defenses in this action or  
16 calculated to lead to the discovery of admissible evidence.

17 3. Blakely objects to the Subpoena to the extent that it imposes an undue  
18 burden and expense.

19 4. Blakely objects to the Subpoena to the extent that it purports to require  
20 Blakely to produce documents outside its possession, custody or control.

21 5. Blakely objects to the Subpoena to the extent that it purports to impose  
22 obligations greater than those imposed by the Federal Rules of Civil Procedure and the Local  
23 Rules of the United States District Court for the Northern District of California.

24 6. The specific responses set forth below are based upon information now  
25 available to Blakely, and Blakely reserves the right at any time to amend or supplement these  
26 responses and objections.

27 7. Any response or objection to the Subpoena does not necessarily mean that  
28 any documents exist or are in the possession, custody, or control of Blakely that are responsive to

SF/21710143.2/3006338-0000325413

any specific category of documents demanded by the Subpoena.

8. Blakely objects to the definitions of "You," "Your," and "Blakely" on the grounds that they are vague and overbroad. Blakely will construe the terms "You," "Your," and "Blakely" to refer to Blakely and its partners and employees who records show were involved in matters relevant to this action.

9. The objections set forth above are hereby incorporated in each specific response set forth below, as if fully set forth therein, and shall be deemed to be continuing even though not specifically referred to. No such objection is waived by Blakely responding to a Request in whole or in part.

#### **SPECIFIC RESPONSES AND OBJECTIONS TO EXAMINATION TOPICS**

##### **Examination Request No. 1:**

All COMMUNICATIONS between BLAKELY and BLOCKBUSTER regarding the validity or invalidity of any claim of either of the PATENTS-IN-SUIT.

##### **Response to Request No. 1:**

Blakely objects to this Request to the extent that it seeks information that is protected by the attorney-client privilege, attorney work product doctrine or any other applicable privilege or doctrine. Blakely further objects to this Request on the grounds that it is vague, ambiguous, overbroad, unduly burdensome, and otherwise seeks information that is not relevant to the claims or defenses in this action or calculated to lead to the discovery of admissible evidence.

Subject to and without waiver of the foregoing general and specific objections, Blakely will answer questions about the opinion provided to Blockbuster and communications, if any, with Blockbuster regarding the validity or invalidity of any claim of U.S. Patent No. 7,024,381.

##### **Examination Request No. 2:**

All studies, analyses, reviews, conclusions or opinions (including opinion of counsel) by either BLAKELY or any other PERSON, whether written or oral, as to the validity

SF/21710143.2/3006338-0000325413

1 or invalidity of any claim of either of the PATENTS-IN-SUIT.

2 **Response to Request No. 2:**

3 Blakely objects to this Request to the extent that it seeks information that is  
4 protected by the attorney-client privilege, attorney work product doctrine or any other applicable  
5 privilege or doctrine. Blakely further objects to this Request on the grounds that it is vague,  
6 ambiguous, overbroad, unduly burdensome, and otherwise seeks information that is not relevant  
7 to the claims or defenses in this action or calculated to lead to the discovery of admissible  
8 evidence.

9 Subject to and without waiver of the foregoing general and specific objections,  
10 Blakely will answer questions about the opinion provided to Blockbuster and communications, if  
11 any, with Blockbuster regarding the validity or invalidity of any claim of U.S. Patent No.  
12 7,024,381.

13 **Examination Request No. 3:**

14 The efforts undertaken by BLAKELY to preserve, retain, and locate  
15 DOCUMENTS responsive to this subpoena.

16 **Response to Request No. 3:**

17 Blakely objects to this Request to the extent that it seeks information that is  
18 protected by the attorney-client privilege, attorney work product doctrine or any other applicable  
19 privilege or doctrine. Blakely further objects to this Request on the grounds that it is vague,  
20 ambiguous, overbroad, unduly burdensome, and otherwise seeks information that is not relevant  
21 to the claims or defenses in this action or calculated to lead to the discovery of admissible  
22 evidence.

23 **Examination Request No. 4:**

24 The manner of keeping and authenticity of any DOCUMENTS produced pursuant  
25 to this subpoena.

26 **Response to Request No. 4:**

27 Blakely objects to this Request to the extent that it seeks information that is  
28 protected by the attorney-client privilege, attorney work product doctrine or any other applicable

SF/21710143.2/3006338-0000325413

1 privilege or doctrine. Blakely further objects to this Request on the grounds that it is vague,  
 2 ambiguous, overbroad, unduly burdensome, and otherwise seeks information that is not relevant  
 3 to the claims or defenses in this action or calculated to lead to the discovery of admissible  
 4 evidence.

## 6 **SPECIFIC RESPONSES AND OBJECTIONS TO DOCUMENT REQUESTS**

### 7 **Document Request No. 1:**

8 ALL DOCUMENTS RELATING TO COMMUNICATIONS regarding the validity  
 9 or invalidity of any claim of either of the PATENTS-IN-SUIT.

### 10 **Response to Request No. 1:**

11 Blakely objects to this Request to the extent that it seeks documents that are  
 12 protected by the attorney-client privilege, attorney work product doctrine or any other applicable  
 13 privilege or doctrine. Blakely further objects to this Request on the grounds that it is vague,  
 14 ambiguous, overbroad, unduly burdensome, and otherwise seeks documents that are not relevant  
 15 to the claims or defenses in this action or calculated to lead to the discovery of admissible  
 16 evidence. Blakely also objects to this Request as seeking information already within the  
 17 possession, custody or control of Netflix and to the extent that such information has already been  
 18 produced to Netflix.

19 Subject to and without waiver of the foregoing general and specific objections,  
 20 Blakely will produce documents that evidence communications between Blockbuster and  
 21 Blakely regarding the validity or invalidity of any claim of U.S. Patent No. 7,024,381.

### 22 **Document Request No. 2:**

23 ALL DOCUMENTS RELATING TO any study, analysis, review, conclusion or  
 24 opinion (including opinion of counsel) by either BLAKELY or any other PERSON, whether  
 25 written or oral, as to the validity or invalidity of any claim of either of the PATENTS-IN-SUIT,  
 26 or to the research, investigation or preparation of any such DOCUMENT.

### 27 **Response to Request No. 2:**

28 Blakely objects to this Request to the extent that it seeks documents that are

SF/21710143.2/3006338-0000325413

1 protected by the attorney-client privilege, attorney work product doctrine or any other applicable  
2 privilege or doctrine. Blakely further objects to this Request on the grounds that it is vague,  
3 ambiguous, overbroad, unduly burdensome, and otherwise seeks documents that are not relevant  
4 to the claims or defenses in this action or calculated to lead to the discovery of admissible  
5 evidence. Blakely also objects to this Request as seeking information already within the  
6 possession, custody or control of Netflix and to the extent that such information has already been  
7 produced to Netflix.

8 Subject to and without waiver of the foregoing general and specific objections,  
9 Blakely will produce documents that evidence communications between Blockbuster and  
10 Blakely regarding the validity or invalidity of any claim of U.S. Patent No. 7,024,381.

11 DATED: April 18, 2007  
12

13 Bingham McCutchen LLP  
14

15 By: Don Pickett / AT  
16

Donn P. Pickett  
Attorneys for Defendant and Counterclaimant  
Blockbuster Inc.  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

I am over eighteen years of age, not a party in this action, and employed in San Francisco County, California at Three Embarcadero Center, San Francisco, California 94111-4067. I am readily familiar with the practice of this office for collection and processing of correspondence for mail/fax/hand delivery/next business day delivery, and they are deposited that same day in the ordinary course of business.

On April 18, 2007, I served the attached:

OBJECTIONS AND RESONSES OF NON-PARTY BLAKELY,  
SOKOLOFF, TAYLOR & ZAFMAN, LLP

✓ (BY FAX) by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

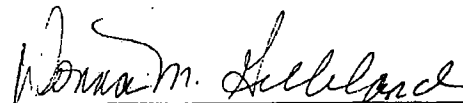
✓ (BY MAIL) by causing a true and correct copy of the above to be placed in the United States Mail at San Francisco, California in sealed envelope(s) with postage prepaid, addressed as set forth below. I am readily familiar with this law firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence is deposited with the United States Postal Service the same day it is left for collection and processing in the ordinary course of business.

☐ (EXPRESS MAIL/OVERNIGHT DELIVERY) by causing a true and correct copy of the document(s) listed above to be delivered by FAX MAIL in sealed envelope(s) with all fees prepaid at the address(es) set forth below.

☐ (PERSONAL SERVICE) by causing a true and correct copy of the above documents to be hand delivered in sealed envelope(s) with all fees fully paid to the person(s) at the address(es) set forth below.

Jeffrey R. Chanin, Esq.  
Daralyn J. Durie, Esq.  
Eugene M. Paige, Esq.  
Kevin T. Reed, Esq.  
Keker & Van Nest, LLP  
710 Sansome Street  
San Francisco, CA 94111-1704  
Phone: 415.391.5400  
Fax: 415.397.7188

1 I declare that I am employed in the office of a member of the bar of this court at  
2 whose direction the service was made and that this declaration was executed on April 18, 2007,  
3 at San Francisco, California.

4   
5

6 Donna M. Gilliland  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



# **EXHIBIT 10**

LAW OFFICES  
**KEKER & VAN NEST**  
LLP

710 SANSOME STREET  
SAN FRANCISCO, CA 94111-1704  
TELEPHONE (415) 391-5400  
FAX (415) 397-7188  
WWW.KVN.COM

SUSAN J. HARRIMAN  
(415) 876-2213  
SHARRIMAN@KVN.COM

April 19, 2007

**VIA E-MAIL**

Michael L. Raiff  
Vinson & Elkins, LLP  
3700 Trammell Crow Center  
2001 Ross Avenue  
Dallas, TX 75201-2974

Re: Netflix, Inc. v. Blockbuster, Inc.

Dear Mr. Raiff:

I am writing to follow up on your discussions with Gene Paige about the foundational questions pertaining to the Echostar privilege issues. Should we be able to reach agreement with respect to these foundational questions, I propose that we submit them as stipulated facts. On that basis, Judge Spero can use them in determining whether or not to grant or deny a motion for protective order and/or a motion to compel.

Since Baker & Botts and Blakely Sokoloff Taylor & Zafman were opinion counsel, their depositions will go forward. Therefore, the questions below are for lawyers at Alschuler Grossman, LLP and Sherman & Sterling, LLP. The questions should be asked of each of the attorneys in those firms who has recorded billable time on this litigation or who reviewed Netflix's patents at issue in this litigation. The questions are as follows:

1. Have you ever expressed any opinion on the validity of either the '450 patent or '381 patent at issue in this case?
  - How often?
  - When?
  - To whom?
  - Was that opinion expressed orally or in writing?
  - If in writing, was the writing preserved?

Michael L. Raiff  
April 19, 2007  
Page 2

2. Have you ever mentioned the opinion letter written by Baker & Botts as to the validity of the '450 patent to anyone at Blockbuster?
  - How often?
  - When?
  - To whom?
  - Was that comment expressed orally or in writing?
  - If in writing, was the writing preserved?
3. Have you mentioned the opinion letter written by Blakely Sokoloff Taylor & Zafman as to the validity of the '381 patent to anyone at Blockbuster ?
  - How often?
  - When?
  - To whom?
  - Was that comment expressed orally or in writing?
  - If in writing, was the writing preserved?
4. Have you ever discussed with anyone at Blockbuster the general subject matter of the validity of the '381 patent?
  - How often?
  - When?
  - To whom?
  - Was that discussion oral or in writing?
  - If in writing, was the writing preserved?
5. Have you ever discussed with anyone at Blockbuster the general subject matter of the validity of the '450 patent?
  - How often?
  - When?

Michael L. Raiff  
April 19, 2007  
Page 3

- To whom?
  - Was that discussion oral or in writing?
  - If in writing, was the writing preserved?
6. Have you made any comment to anyone at Blockbuster about the evidence concerning the validity of the '381 patent?
- How often?
  - When?
  - To whom?
  - Was that comment made orally or in writing?
  - If in writing, was the writing preserved?
7. Have you made any comment to anyone at Blockbuster about the evidence concerning the validity of the '450 patent?
- How often?
  - When?
  - To whom?
  - Was that comment made orally or in writing?
  - If in writing, was the writing preserved?
8. Have you had any communications with anyone in your office commenting on conversations with Blockbuster that in any way related to the validity of the '381 patent?
- How often?
  - When?
  - To whom?
  - Was that communication oral or in writing?
  - If in writing, was the writing preserved?

Michael L. Raiff  
April 19, 2007  
Page 4

9. Have you had any communications with anyone in your office commenting on conversations with Blockbuster that in any way related to the validity of the '450 patent?
  - How often?
  - When?
  - To whom?
  - Was that communication oral or in writing?
  - If in writing, was the writing preserved?
10. Have you ever discussed the likelihood that either the '450 patent or the '381 patent will be found to be valid?
  - How often?
  - When?
  - To whom?
  - Was that discussion oral or in writing?
  - If in writing, was the writing preserved?

We would like complete answers to these questions and a list of the people to whom the questions were posed. With that, we likely will have a sufficient foundation that will enable us to arrive at stipulated facts and thus avoid the need for depositions. If we cannot reach agreement on these questions or the answers thereto, we will proceed with the depositions.

Thank you for your attention to this matter.

Very truly yours,



SUSAN J. HARRIMAN

SJH:js

# **EXHIBIT 11**

**BINGHAM McCUTCHEN**

Ryan M. Nishimoto  
Direct Phone: (213) 680-6782  
Direct Fax: (213) 830-8656  
ryan.nishimoto@bingham.com

April 18, 2007

**Via FedEx and e-mail**

Bingham McCutchen LLP  
Suite 4400  
355 South Grand Avenue  
Los Angeles, CA  
90071-3106

Kevin T. Reed  
Keker & Van Nest, LLP  
710 Sansome Street  
San Francisco, CA 94111-1704

**Re: Netflix, Inc. v. Blockbuster, Inc., Case No. C 06 2361 WHA  
(JCS)**

213.680.6400

213.680.6499 fax

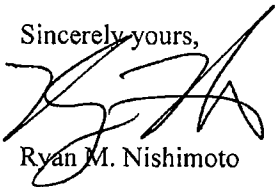
bingham.com

Dear Mr. Reed:

Boston  
Hartford  
London  
Los Angeles  
New York  
Orange County  
San Francisco  
Silicon Valley  
Tokyo  
Walnut Creek  
Washington

Enclosed please find documents labeled for identification, BLAKELY00001-  
BLAKELY00100 from the files of Blakely, Sokoloff, Taylor & Zafman LLP and a  
privilege log. Please feel free to contact me if you have any questions.

Sincerely yours,



Ryan M. Nishimoto

Enclosures

cc: Marshall B. Grossman (by e-mail)  
William J. O'Brien (by e-mail)  
Tony D. Chen (by e-mail)  
Dominique N. Thomas  
Jeffrey R. Chanin (by e-mail)  
Daralyn J. Durie (by U.S. mail, without enclosures)  
Eugene M. Paige (by e-mail)

# **EXHIBIT 12**



Vinson & Elkins

Daniel J. Kelly dkelly@velaw.com  
Tel 214.220.7975 Fax 214.999.7975

April 27, 2007

**Via Federal Express**  
Eugene M. Paige, Esq.  
KEKER & VAN NEST LLP  
710 Sansome Street  
San Francisco, CA 94111-1704

Re: *Netflix, Inc. v. Blockbuster Inc.*; Case No. C-06-02361 WHA; In the United States District Court for the Northern District of California

Dear Gene:

In response to the April 3, 2007 Subpoena served on Baker Botts, LLP by Netflix, Inc., I am enclosing documents responsive to the document requests in the Subpoena. Those documents have been Bates-stamped BAKER00000001-00000488, Confidential-Attorneys' Eyes Only. Baker Botts is producing these documents without waiving the general and specific objections listed in its Objections and Responses to Netflix's Notice of Deposition.

Regards,

Daniel J. Kelly

Enclosures  
102162:7726  
Dallas 1246478v1

c: Michael L. Raiff

Vinson & Elkins LLP Attorneys at Law Austin Beijing Dallas  
Dubai Houston London Moscow New York Tokyo Washington

Trammell Crow Center, 2001 Ross Avenue, Suite 3700  
Dallas, Texas 75201-2975 Tel 214.220.7700 Fax 214.220.7716  
www.velaw.com

EXHIBIT 12 PAGE 86

# **EXHIBIT 13**

---

**From:** Kelly, Dan [mailto:dkelly@velaw.com]  
**Sent:** Monday, April 30, 2007 8:06 PM  
**To:** Gene Palge  
**Cc:** Green, Vicki  
**Subject:** Netflix v. Blockbuster

Dear Gene,

Following up on our conversation of this afternoon and your letter of this evening, I am attaching an additional document responsive to the document requests in the Subpoena issued to Baker Botts, LLP. The document has been Bates-stamped BAKER00000489-582. Baker Botts is producing this document without waiving the general and specific objections listed in its Objections and Responses to Netflix's Notice of Deposition. Please confirm that you have received this email and the attachment. I will be sending you the privilege log for the documents withheld by Baker Botts in a separate email.

Regards,

Dan

# **EXHIBIT 14**

Hearing Transcript 4/16/2007 11:00:00 AM

Pages 1 - 25

United States District Court  
Northern District of California  
Before The Honorable William Alsup  
Netflix, Incorporated, )

)  
Plaintiff, )

)  
vs. ) No. C06-2361 WHA

)  
Blockbuster, Incorporated, )

)  
Defendant. )

)  
San Francisco, California

Monday, April 16, 2007

Reporter's Transcript Of Proceedings

Appearances:

For Plaintiff: Keker & Van Nest

710 Sansome Street

San Francisco, California 94111

By: Daralyn J. Durie, Esquire

Eugene M. Paige, Esquire

For Defendant: Bingham McCutchen

Three Embarcadero Center

San Francisco, California 94111

By: Donn P. Pickett, Esquire

Adrienne L. Tacias, Esquire

Reported By: Sahar McVickar, RPR, CSR No. 12963

Official Reporter, U.S. District Court

For the Northern District of California

(Computerized Transcription By Eclipse)

1

3

1 MS. TACLAS: T-a-c-l-a-s.  
2 THE COURT: All right. Okay. Welcome to both of  
3 you.

4 Everybody have a seat for a minute.

5 We are here on a discovery dispute involving the  
6 issue of the extent to which Netflix can get various items.

7 Now, Judge Spero is back, so this case having been  
8 previously referred to him for discovery, I'm not going to  
9 actually rule on this, I'm going to let you go talk to him, but  
10 I do have some questions.

11 Since I spent some time on getting ready for this  
12 hearing, I am going to give you the benefit of my thinking  
13 because I have thought a lot about this very problem.

14 First, I have this question, in the Guidelines I say  
15 that the experts have got to save their drafts. Now, sometimes  
16 the lawyers sneak around and stipulate around me on that;  
17 that's okay if both sides do, but the -- what's the situation  
18 here?

19 MS. DURIE: We have reached such a stipulation, Your  
20 Honor, that we will not be demanding the exchange of drafts of  
21 expert opinions.

22 THE COURT: All right. Okay, then, have a seat.

23 Now, I'm going to tell why I think that puts us in  
24 an awkward position, because here you are trying to get all  
25 this information about whether or not there was an attempt to

2

4

1 Monday, April 16, 2007 11:00 a.m.

2 PROCEEDINGS

3 THE COURT: Do you mind if we take the other matter  
4 out of turn?

5 THE CLERK: Okay.

6 THE COURT: I got Judge Spero here, and  
7 unfortunately he takes priority over you.

8 THE CLERK: Let me tell Ms. Thys.

9 THE COURT: They are not here?

10 THE CLERK: No.

11 Calling civil action C06-2361, Netflix versus

12 Blockbuster.

13 Counsel, please state your appearances for the  
14 record.

15 MS. DURIE: Good morning, Your Honor.

16 Daralyn Durie and Gene Paige from Keker & Van Nest  
17 for Netflix.

18 THE COURT: Welcome back.

19 MR. PICKETT: Good morning. Donn Pickett and

20 Adrienne Tacias from Bingham McCutchen appearing for the first  
21 time.

22 THE COURT: Welcome to the case.

23 Your name?

24 MS. TACLAS: Adrienne.

25 THE COURT: How do you spell that last name?

1 manipulate the opinion of counsel, but the -- you agreed the  
2 drafts can be destroyed. Now, maybe the drafts you are talking  
3 about were the drafts of the retained experts and not the  
4 attorney experts, but maybe it's not so clear who's who.

5 MS. DURIE: Your Honor, I think it is quite clear  
6 from the stipulation that we were discussing drafts of experts  
7 who would be providing expert opinion testimony at trial and  
8 designated as experts, not attorneys who would be providing  
9 opinions.

10 THE COURT: Well, but those attorneys wind up  
11 testifying and --

12 MS. DURIE: Well --

13 THE COURT: I'm not going to rule on it now, I'm  
14 just saying I see it as an issue, and later on we'll have to  
15 see when the chips fall on that. This is an issue.

16 MS. DURIE: I understand. And let me say it, the  
17 stipulation, we have reached an agreement in principle, it  
18 hasn't been finalized. And I actually just last week said we  
19 should include in the stipulation language to make that  
20 explicit. It is explicitly contemplated that we are not  
21 talking about attorneys retained to provide opinions, but only  
22 those experts who will testify as experts under Rule 26 at  
23 trial.

24 THE COURT: Well, you are telling me you don't have  
25 a done deal yet, I don't know whether you can back out of a

Hearing Transcript 4/16/2007 11:00:00 AM

5

1 verbal deal or not, but you would not want to be in the  
2 position of having any expert in this case having destroyed a  
3 draft absent a stipulation.  
4 MS. DURIE: Absolutely. And we have not --  
5 THE COURT: Because I will tell the jury, I will  
6 turn to the jury and say, Ms. Durie's expert destroyed the  
7 drafts.  
8 MS. DURIE: I understand. And we have not destroyed  
9 drafts. In fact, the stipulation I think does not call for  
10 drafts to be destroyed, but simply agrees that we will not  
11 require production of drafts of the actual expert reports.  
12 THE COURT: All right. I am just warning you both  
13 that there is an issue, and try not to get crosswise with that  
14 issue.  
15 MS. DURIE: Understood.  
16 THE COURT: Because I can just see the attorneys  
17 testifying and one side saying, oh, no, they are experts and  
18 the other side saying, oh, no, they are defendants.  
19 Okay, have a seat.  
20 MS. DURIE: Thank you.  
21 THE COURT: Next, there is a problem that I see, you  
22 file -- the patent issues on day one, and you file suit on day  
23 one accusing them of willfulness; now how can you do that if  
24 they don't even know about the patent?  
25 MS. DURIE: Your Honor, we did not accuse them in

6

1 our complaint of willfully infringing the patent that issued on  
2 that day. In our complaint, we accused them of willfully  
3 infringing the '450 patent, which had issued some three years  
4 prior to the filing of the lawsuit. We later amended our  
5 complaint to add an allegation of willfulness with respect to  
6 the '381.  
7 THE COURT: All right.  
8 There could be an issue. The reason I bring this  
9 up, there could be an issue over when the opinions were issued  
10 relative to the knowledge of the patent. But I have  
11 misunderstood, I thought from Mr. Pickett's letter that you had  
12 accused him of willfulness on day one. So I am going to just  
13 let that fall to the side.  
14 MS. DURIE: Not with respect to the '381 patent.  
15 THE COURT: All right.  
16 Okay, where does it stand on the Texas motion for  
17 protective order?  
18 MS. DURIE: Where it stands is that Blockbuster did  
19 file a motion for a protective order in Texas. It is set -- as  
20 we understand it, they have not requested any expedited  
21 treatment of that motion, and therefore, it would apparently be  
22 heard on a regular motion calendar.  
23 We are prepared to file a motion to transfer in the  
24 Texas court asking the Texas court to transfer that motion to  
25 this Court, which the Texas court can do in the exercise of its

7

1 discretion if it believes that this Court is a more appropriate  
2 forum for the resolution of that dispute.  
3 Why we're here, in essence, was both to tee up a  
4 briefing schedule, if you will, on these issues before  
5 Judge Spero, but also we believe that it's quite clear that  
6 this motion should be heard in this court, that there is no  
7 good reason for it to be heard in Texas, and that Blockbuster  
8 should withdraw its motion for protective order.  
9 THE COURT: Well, Mr. Pickett's letter, though, said  
10 that you, yourself, maybe not you, personally, but Netflix  
11 wrote letters to these witnesses saying that you were going to  
12 seek relief in the Northern District of Texas.  
13 MS. DURIE: Um --  
14 THE COURT: That's what the letter here says.  
15 MS. DURIE: I think that is perhaps ambiguous or not  
16 careful phrasing.  
17 We did send letters -- there are multiple entities  
18 involved in the motion for protective order that was filed in  
19 Texas. One is Blockbuster itself, obviously, a party to  
20 litigation present here.  
21 We also sent letters to various of Blockbuster's  
22 counsel, copies of which are attached to our letter to this  
23 Court, indicating that we expected them to preserve documents,  
24 pending the Court's determination of this issue, and that we  
25 were asking them to do so in accordance with existing law.

8

1 The lawyers are located all over the country.  
2 Alschuler Grossman is in Los Angeles, in the Central District  
3 of California; other lawyers, I believe, are both in New York  
4 and Texas. We did issue subpoenas out of the various  
5 jurisdictions in which those law firms may be found seeking  
6 testimony and documents from them, but we never indicated that  
7 we intended to litigate any issues arising from those subpoenas  
8 anywhere other than here.  
9 THE COURT: Well, I saw your letters, I think you  
10 summarized them correctly.  
11 Now, Mr. Pickett, let me turn on you for a second.  
12 I don't see where you got out of those letters any statement  
13 that they wanted to seek relief in the Northern District of  
14 Texas.  
15 MR. PICKETT: Nor do I see where in my letter to you  
16 where I stated otherwise.  
17 THE COURT: Look on page 2, where you say apprising  
18 them of Netflix's intention to move to compel that they do not  
19 accede to the discovery demands does not alter these witnesses'  
20 rights to seek relief in the Northern District of Texas.  
21 MR. PICKETT: Right. It says that Netflix has  
22 intention to move to compel, it does not say under which  
23 jurisdiction. But in any event, the Federal Rules, 26 and 30  
24 and 45 all allow --  
25 THE COURT: All right, all right.

Hearing Transcript 4/16/2007 11:00:00 AM

9

11

1 MR. PICKETT: -- the party or a court --  
 2 THE COURT: I see. I misread your --  
 3 MR. PICKETT: -- to --  
 4 THE COURT: I thought you were saying that they had  
 5 threatened to go to Texas.  
 6 MR. PICKETT: No, never indicated that, never  
 7 intended to do so, Your Honor.  
 8 THE COURT: All right, all right.  
 9 Now, here is another procedural point: With respect  
 10 to attorney-client, I think this Court is the one that ought to  
 11 decide that issue. With respect to work product vis-à-vis the  
 12 counsel, trial counsel in this case, I think this Court is the  
 13 one that should decide the issue.  
 14 Now, if there is some Texas or New York counsel that  
 15 has an independent work product issue that stands alone and  
 16 separate and apart from any attorney-client, I'm not so sure  
 17 that we are the place to have that issue resolved.  
 18 MS. DURIE: Fair enough, Your Honor. And that is  
 19 not at issue except in the following sense: We think under  
 20 EchoStar, it's clear that we are entitled to all communications  
 21 with all counsel, including trial counsel, on the subject  
 22 matter of the opinions, and that would be the attorney-client  
 23 issue.  
 24 To the extent that there is work product tangled up  
 25 with those attorney-client communications, we don't think that

1 MS. DURIE: It is right before section B of the  
 2 opinion. It's -- I'm sorry, Roman numeral III, there is A and  
 3 B, and it's at the very end of Roman numeral III, section A.  
 4 THE COURT: Okay, "Thus, when" --  
 5 MS. DURIE: Correct.  
 6 THE COURT: Continue on.  
 7 MS. DURIE: So it says, "Thus, when Ecostar chose to  
 8 rely on" --  
 9 THE COURT: Not so fast. The court reporter will  
 10 never get it.  
 11 MS. DURIE: Sorry.  
 12 "Thus, when Ecostar chose to rely on the advice of  
 13 in-house counsel, it waived the attorney-client privilege with  
 14 regard to any attorney-client communications relating to the  
 15 same subject matter, including communications with counsel  
 16 other than in-house counsel, which would include communications  
 17 with Merchant and Gould."  
 18 Now, the case that the Federal Circuit then cites  
 19 Akeva versus Mizuno Corporation, from the Middle District of  
 20 North Carolina. In the Akeva case, the Court was explicit and  
 21 held as follows: "All opinions received by the client relating  
 22 to infringement must be revealed, even if they come from  
 23 defendant's trial attorneys."  
 24 THE COURT: Well, but in that case was the  
 25 uninfringement opinion from trial counsel?

10

12

1 is a separate basis for them to resist the production of those  
 2 documents under Ecostar.  
 3 To the extent that there is uncommunicated work  
 4 product in the possession of the attorneys that was not  
 5 transmitted to the client, to Blockbuster, that is an issue  
 6 that we think is open under current law that the Federal  
 7 Circuit will be considering en banc.  
 8 We have not demanded the production of that  
 9 uncommunicated work product as of now, and, instead, all we did  
 10 is ask the various lawyers in question to preserve and not to  
 11 discard those documents in the event that at a later date the  
 12 Court rules that we are entitled to that uncommunicated work  
 13 product.  
 14 THE COURT: All right.  
 15 Help me understand the Ecostar case, which I read  
 16 this morning. Where in there does it address trial counsel as  
 17 opposed to the opinion counsel?  
 18 MS. DURIE: Right. So -- unfortunately, the copy  
 19 that I have is somewhat unhelpfully printed off-line, and so I  
 20 can't refer Your Honor readily to the page number in the  
 21 printed version of the opinion. But the Court states, and I  
 22 would be happy to hand this up, "When Ecostar chose to rely on  
 23 the advice of" --  
 24 THE COURT: Wait. Tell me how the paragraph starts,  
 25 and I'll find the paragraph.

1 MS. DURIE: I believe, Your Honor, that it was not.  
 2 And I don't have a copy of the Akeva case with me, I have a  
 3 copy of another case that cites to it and quotes that language.  
 4 Other courts following EchoStar, other district  
 5 courts, have interpreted the EchoStar opinion to extend the  
 6 waiver of the privilege to trial counsel, even in situations  
 7 where trial counsel were not also opinion counsel. I'm looking  
 8 at one case from the Middle District of Illinois that so holds,  
 9 but, certainly, there are others.  
 10 Your Honor said that you didn't want to get into the  
 11 subject matter of this dispute, and I do think it's appropriate  
 12 to argue the actual scope of the waiver in a proceeding in  
 13 front of Judge Spero, but suffice it to say that we think it's  
 14 quite clear that the current state of the law under EchoStar is  
 15 that the scope of the waiver does extend to trial counsel.  
 16 That is one of the questions that is currently  
 17 pending en banc before the Federal Circuit, which wouldn't be  
 18 the case if that were not the --  
 19 THE COURT: Well, the -- I can't -- I don't agree  
 20 with that. The -- I think the reasons the Seagate case is  
 21 there is taking en banc is because some judge looked at  
 22 EchoStar and construed it just the way you did, and the Federal  
 23 Circuit says, wait a minute, are we really going that far, and  
 24 they think it's important enough to have that heard and decided  
 25 en banc.

13

15

1 Now, maybe they will go that far, but maybe not.  
2 It's a big step whenever you start trying to depose the trial  
3 lawyer on the other side.

4 MS. DURIE: It is a big step, I agree, but I think  
5 it's hard to read EchoStar in any principled way and read it  
6 otherwise when the Court says that it extends to any  
7 attorney-client communication.

8 THE COURT: Well, that's putting a lot of weight on  
9 one word. It just says -- it just says, "any attorney-client  
10 communications relating to the same subject, including  
11 communications with counsel other than in-house"; what they  
12 conveniently leave out there is trial counsel.

13 So I'm not sure -- you may wind up being right, I'm  
14 not saying you're not, I'm just saying I read EchoStar this  
15 morning saying I just can't believe that the Keeler law firm  
16 would cite this. And they must say trial counsel in here  
17 somewhere. So I read it twice looking for trial counsel, and I  
18 never saw it.

19 MS. DURIE: It does not explicitly say trial counsel  
20 because that was not the precise issue that was presented in  
21 EchoStar, but I think the language and the logic of the opinion  
22 extends to trial counsel. Certainly, they extended it to  
23 people in the EchoStar situation other than the opinion  
24 counsel. And it's not clear to me why you would extend it to  
25 one group of such other attorneys and not another.

14

16

1 And second, as I said, a number of district courts  
2 following on EchoStar have read it just that way, to extend to  
3 trial counsel. And this is an issue.

4 I do want to make one observation. This is not an  
5 issue that should or I think could have caught Blockbuster by  
6 surprise. There have been a number of District Court opinions  
7 following on EchoStar that have made the point that the waiver  
8 of the privilege under EchoStar is this broad. And I think  
9 that by choosing to rely on an opinion of counsel, and  
10 particularly an opinion of counsel, one which was drafted the  
11 day before or signed and dated the day before the exchange of  
12 opinions of counsel was due and which actually explicitly cites  
13 and relies on information provided by trial counsel by  
14 Alschuler Grossman, I just think --

15 THE COURT: Let me ask you a question, and I'm going  
16 to ask you for a clear answer, no waffling. Let's say that you  
17 were to get this discovery, and let's say that the Alschuler  
18 firm -- no "T" in there, Alschuler firm -- surprises you and  
19 gives a -- and says, yes, we have been advising our client from  
20 day one that this patent is totally invalid, totally, so then  
21 at the trial the witness from the company gets up on the stand  
22 and says not only did the outside people tell us this patent  
23 was no good, our own in-house people told us it was no good,  
24 and our trial counsel right over there has been telling us that  
25 this patent is no good; now, I know you, you would say that

1 should not come in because you are going to have to  
2 cross-examine, and the jury will be unduly influenced by the  
3 fact that Mr. Grossman is effectively testifying. And you are  
4 not going to like that, are you?

5 MS. DURIE: Well --

6 THE COURT: So you tell me now, is it admissible or  
7 not?

8 MS. DURIE: Let me make an observation, and then I  
9 will unambiguously answer your question.

10 My observation is that Blockbuster did not disclose  
11 any opinion or anything from Alschuler Grossman that it was  
12 relying on the date --

13 THE COURT: That would be easy to fix if this  
14 discovery is allowed.

15 MS. DURIE: Understood.

16 If the Court is going to put me to that choice, I  
17 would rather get the discovery and find out what was  
18 communicated and live with the consequences of having --

19 THE COURT: So you want it to be admissible either  
20 way?

21 MS. DURIE: I don't want it -- to be clear, I don't  
22 want it to be admissible. And I think that the fact that they  
23 did not rely on and say that they were relying on anything that  
24 had been told to them by Alschuler Grossman is a reason it  
25 should not be.

1 THE COURT: Well, the reason is that it's not very  
2 clear that they are even entitled to rely on the opinion of  
3 trial counsel, and therefore I can understand why they didn't  
4 list that. I can't imagine anybody has ever listed the opinion  
5 of trial counsel, unless they had written one beforehand that  
6 had gone through the normal thing.  
7 But you are not really answering my question. I'm  
8 taking what you are saying is you are okay with it being  
9 admitted, and you are not going to object whenever Mr. Pickett  
10 stands up and asks all these questions about how Mr. Grossman  
11 told him this patent was no good from day one.

12 And so now the jury is going to hear it from  
13 multiple sources that this patent is no good, and you are going  
14 to be complaining about how you can't cross-examine  
15 Mr. Grossman because the jury loves him.

16 MS. DURIE: Let me put it this way: If the Court's  
17 order finding a waiver of the privilege is conditional on our  
18 agreeing that such testimony be admitted and that the client be  
19 allowed to testify about what Mr. Grossman told him and  
20 therefore presumably that we be entitled to cross-examine  
21 Mr. Grossman at trial, I'll take that deal.

22 THE COURT: So you capily hedged your answer.

23 MS. DURIE: Well, I'm trying to be as direct as I  
24 can. I believe that under existing law we are entitled to this  
25 information. And I think under existing law because they did



17

1 not disclose that they were going to be relying on an opinion  
2 from Alschuler Grossman, they shouldn't be able to.

3 THE COURT: We can fix that.

4 MS. DURIE: I understand.

5 THE COURT: If this all came out, and it was as good  
6 as it probably is for them, then you are going to wind up  
7 having that problem.

8 MS. DURIE: I understand what Your Honor is saying.  
9 I understand that if we get the information you are going to  
10 fix it, and we are proceeding notwithstanding that.

11 THE COURT: All right.

12 Here is the next thing, let me give you all some  
13 thoughts about the way I would normally do this.

14 MR. PICKETT: Excuse me, Your Honor, would it be  
15 appropriate for me to respond?

16 THE COURT: It will not be. Have a seat.

17 MR. PICKETT: Thought I would ask.

18 THE COURT: And you have a seat.

19 MS. DURIE: I will have a seat.

20 THE COURT: I want to tell you about how I feel  
21 about some of these discovery things.

22 I think foundational questions should always be  
23 answered. And I was upset to see that your law firm,  
24 Mr. Pickett -- it wasn't you, it was your co-counsel, was down  
25 there instructing people not to answer foundational questions.

18

1 The question did you ever get a letter on the  
2 subject of X from Mr. Grossman is not privileged, it's not.  
3 Now, if you were then going to say, well, what does the letter  
4 say, that would be privileged for the people being --

5 MR. PICKETT: I understand the distinction.

6 THE COURT: All right, you understand it. So you  
7 were entitled to get the answer to that question. It's  
8 foundational. How can a judge ever rule on the privilege  
9 unless we know -- so you see the point.

10 Here is another thing, I can't stand it whenever the  
11 outside lawyers manipulate the opinion of counsel, that's why I  
12 asked about the drafts. And as far as I'm concerned, you ought  
13 to be able to have a hey day, if need be, showing that  
14 Mr. Grossman manipulated the outside opinion. Maybe he didn't,  
15 maybe he did it right and -- or some other lawyer. Wasn't  
16 Sherman and Sterling in this case somewhere?

17 MS. DURIE: Yes.

18 THE COURT: Maybe they did it very cleverly  
19 through -- I don't know how it was done. If you can't get at  
20 the drafts and the E-mails and all that because of your  
21 stipulation, maybe you are sunk on this. But I'm just saying  
22 that as a general rule I would allow wide open discovery to  
23 show that the expert has been influenced by somebody so that  
24 it's ridiculous to rely on that opinion because it's been  
25 manipulated.

19

1 Now, on the other hand, ordinarily, I would be  
2 prejudiced against allowing you to discover what Mr. Grossman  
3 says privately to his own client because there are any number  
4 of reasons why even though he may think the patent is invalid  
5 he can say, look, is a jury going to understand this? Is a  
6 jury going to understand the thing with the ribbons and all  
7 that? And even though I'm telling you that the patent is  
8 invalid a jury may not fully understand it. It's technical.

9 There are any number of reasons that go beyond the  
10 scope of the merits as to why a lawyer might give advice to a  
11 client that might be misconstrued as saying, well, the  
12 patent -- we're going to lose this case, but we're going to  
13 lose the invalidity issue.

14 So I'm troubled by that. And I want you to factor  
15 that into your briefing in front of Judge Spero. Certainly,  
16 things that are just work product, that middle category that  
17 was laid out, to me, if a law firm has been keeping stuff  
18 completely to themselves and work product that they never share  
19 with the expert, they never share with the client, that ought  
20 to be never touched unless there is a huge good reason to do  
21 that. So that second category that was in EchoStar I think  
22 ought to be beyond the pale.

23 Now, they ought to keep it and preserve it in case  
24 I'm wrong and the Court goes the other way. So the  
25 preservation is fine, but I would be very much surprised if any

20

1 judge ever ordered that to be produced.

2 I think the depositions ought to be going forward to  
3 lay down the foundation. It could be -- I had this happen to  
4 me many times in practice, that we fight over nothing. Turns  
5 out that when you ask the right questions, there is no letter.  
6 There is no letter on the subject. There was no advice on the  
7 subject. Because your side was directing not to answer, no one  
8 knows whether there is anything worth fighting about. Those  
9 foundational points, that -- including privilege logs, ought to  
10 be produced. I don't know how Sherman and Sterling fits in  
11 here, but if they were giving opinions the same thing applies  
12 there.

13 These are my thoughts, having read these materials,  
14 because I didn't know until an hour ago that Judge Spero was  
15 back from his vacation and I thought I had to do this order.  
16 But now that he is back, I think it's better that he take  
17 charge of this.

18 Now, we are not going to stay this case on account  
19 of the Seagate case. You are going to have to find some  
20 solution or we go forward, and I just run the risk of getting  
21 reversed. I don't think I'll get reversed. I'll make the best  
22 decision I can. But I will not let grass grow under our feet.  
23 There is no such thing as a stay, as Ms. Durie knows from  
24 another case. Once you file a lawsuit here, we are going to  
25 move it along.

21

23

1 Our case is set for when, September?  
 2 MS. DURIE: Yes, Your Honor.  
 3 THE COURT: You are going to have a trial.  
 4 MR. PICKETT: I just want to understand, if I could;  
 5 there is a difference between staying a case, which we are not  
 6 seeking, and carving out a privilege issue, which if we were  
 7 forced to produce trial counsel opinions and work product, it  
 8 would be irreparable injury.  
 9 THE COURT: That is a good point.  
 10 MR. PICKETT: That's exactly why Seagate, the  
 11 district court judge allowed discovery in Seagate. It went up  
 12 on a petition for mandamus, and Seagate stayed not the case,  
 13 the Federal Circuit stayed not the case, but just that sliver  
 14 of the case having to do with discovery.  
 15 There is an oral argument set on June 7 in Seagate,  
 16 and that is why Judge White and Magistrate Judge Lloyd stayed  
 17 that piece of discovery in a case last month that was before  
 18 them --  
 19 THE COURT: No, let's be clear. We can stay the  
 20 actual act of producing it.  
 21 MR. PICKETT: Yeah.  
 22 THE COURT: But forgetting the foundational material  
 23 to find out what we are fighting over is worth getting done.  
 24 That's not going to waive anything.  
 25 MR. PICKETT: I completely agree with that. I think

1 do you think the Seagate decision will be decided, Mr. Pickett?  
 2 MR. PICKETT: They have set the hearing date for  
 3 June 7. There is an extraordinary amount of interest in that  
 4 decision because district courts are split, frankly, not just  
 5 two ways, but at least three different ways on the subject.  
 6 And there are a number of cases backed up waiting for that  
 7 opinion to come down. A lot of articles and so forth, so a lot  
 8 of attention.  
 9 THE COURT: I should say one other thing while I'm  
 10 on the subject of giving you my advisory opinions.  
 11 If it turns out that you win this issue,  
 12 Mr. Pickett, by that I mean you don't have to produce the  
 13 material, then your side will be under an absolute injunction  
 14 during the trial never to imply to the jury at all, at all,  
 15 that the defense counsel have given the client this advice.  
 16 And even the way in which the client answers the  
 17 question about their good faith could not imply that any such  
 18 thing has occurred, because then that would be opening the door  
 19 in a most unfair way, you withheld the evidence and then you  
 20 want the jury to think the evidence is there. I would never  
 21 allow that.  
 22 MR. PICKETT: Right.  
 23 THE COURT: And I would give very strong remedial  
 24 instructions to the jury if that were to occur.  
 25 MR. PICKETT: I think that's among the reasons they

22

24

1 we are in agreement, actually.  
 2 THE COURT: When the day comes that we're -- that  
 3 part of the discovery could be stayed to the last minute, and  
 4 then we may have to make a last minute decision. But what I'm  
 5 telling you is we will not stay the trial in September so we  
 6 can hang around to see how that issue comes out. We will find  
 7 a way to deal with it.  
 8 MR. PICKETT: Understood.  
 9 MS. DURIE: Understood.  
 10 THE COURT: All right, so what I think you ought to  
 11 do now -- just a second.  
 12 I guess it's best just to let me ask you to go down  
 13 with Judge Spero and work out your own briefing schedule with  
 14 him. Here we are near the end of the discovery period, and I  
 15 don't know where you are on discovery.  
 16 I don't know if anybody has in mind asking for a  
 17 trial continuance, but you will have to have an extremely good  
 18 reason as to ask for a trial continuance. We can't allow the  
 19 Federal Circuit's calendar to -- or the Ninth Circuit's  
 20 calendar or anyone else's calendar. The fact that they might  
 21 change the law or -- on some issue of discovery, we have a  
 22 calendar to run, so we have to go forward and find a way to  
 23 either work around this problem or for me to make the decision  
 24 that winds up being the same one that they make.  
 25 Maybe it will be decided. Will -- you think -- when

1 kept trial counsel's opinion, counsel separate --  
 2 THE COURT: But I'm saying that the client itself  
 3 cannot answer those questions in a way, unless  
 4 cross-examination opens it up, cannot answer those questions in  
 5 such a way as to imply that there has been consistent advice  
 6 from trial counsel. That would be a big no-no.  
 7 MR. PICKETT: No.  
 8 THE COURT: I've done all the damage I can do today,  
 9 and now I'm going to turn you over to Judge Spero.  
 10 Can you continue to meet with them and work out a  
 11 schedule?  
 12 JUDGE SPERO: Sure. Can I use your jury room?  
 13 THE COURT: You can do that.  
 14 Now let's go back to the Jones Day case.  
 15 (Proceedings adjourned at 10:50 a.m.)

18 ---o0o---

CERTIFICATE OF REPORTER

I, Sahar McVickar, Official Court Reporter for the  
United States Court, Northern District of California, hereby  
certify that the foregoing proceedings were reported by me, a  
certified shorthand reporter, and were thereafter transcribed  
under my direction into typewriting; that the foregoing is a  
full, complete and true record of said proceedings as bound by  
me at the time of filing. The validity of the reporter's  
certification of said transcript may be void upon disassembly  
and/or removal from the court file.

---

Sahar McVickar, RPR, CSR No. 12963

April 16, 2007

# **EXHIBIT 15**

LAW OFFICES  
**KEKER & VAN NEST**  
LLP

710 BANSOME STREET  
SAN FRANCISCO, CA 94111-1704  
TELEPHONE (415) 391-5400  
FAX (415) 397-7188  
WWW.KVN.COM

DOROTHY R. McLAUGHLIN  
DMCLAUGHLIN@KVN.COM

April 9, 2007

**VIA PDF & U.S. MAIL**

Barton E. Showalter  
2001 Ross Avenue  
Dallas, Texas 75201-2980

Re: *Netflix v. Blockbuster, Inc., Case No. C-06-2361 WHA*

Dear Mr. Showalter:

Keker and Van Nest serves as counsel for Netflix. I write with regard to the subpoena that was served on you last Wednesday in the above-mentioned case.

Netflix sued Blockbuster in April 2006 for infringement of two of Netflix's patents: U.S. Patent No. 6,584,450 (the "'450 Patent") and U.S. Patent No. 7,024,381 (the "'381 Patent") (collectively "the patents in suit"). Netflix alleges, among other things, that Blockbuster has infringed and is infringing these patents willfully.

As a defense to Netflix's charge of willfulness, Blockbuster seeks to rely upon—and has produced to us—opinions of counsel regarding the '450 and '381 patents. Blockbuster has thus waived the attorney-client privilege and, to some extent, the work product protection that previously shielded from discovery documents related to these opinions. *See In re Echostar Commc'ns. Corp.*, 448 F.3d 1294, 1304 (Fed. Cir. 2006). Specifically, the Federal Circuit noted in *Echostar* that three categories of documents are relevant to waiver related to an advice-of-counsel defense:

1. documents that embody a communication between the attorney and client concerning the subject matter of the case, such as a traditional opinion letter;
2. documents analyzing the law, facts, trial strategy, and so forth that reflect the attorney's mental impressions but were not given to the client; and
3. documents that discuss a communication between attorney and client concerning the subject matter of the case but are not themselves communications to or from the client.

Bart E. Showalter  
April 9, 2007  
Page 2

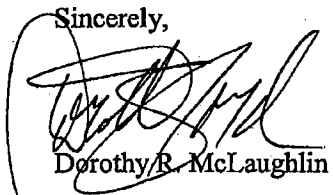
*See id.* at 1302 (citation omitted). The Federal Circuit held that upon assertion of the advice-of-counsel defense the attorney-client privilege and work product immunity are waived with regard to categories one and three above. *Id.* at 1304.

The state of the law with regard to the scope of the waiver articulated in *Echostar* may change, given the Federal Circuit's decision to rehear en banc *In re Seagate Technology, LLC*. Misc. No. 830, 2007 WL 196403, at \*1 (Fed. Cir. Jan. 26, 2007). The en banc ruling may either widen or narrow the scope of Blockbuster's waivers. The Federal Circuit's decision in *Echostar*, however, establishes the current state of the law and remains binding unless and until it is overturned by the Federal Circuit en banc. *Fed. Nat. 'l Mortgage Ass'n. v. United States*, 469 F.3d 968, 972 (Fed. Cir. 2006) ("A panel of this court is bound by prior precedential decisions unless and until overturned *en banc*." ) (quotation marks and citation omitted).

We intend to enforce the law as it currently exists and are therefore expecting production of documents described in categories one and three above. Additionally, we ask that you please preserve all documents described in category two because that information may become discoverable before this case is over.

Our deadline to file a motion to compel is April 19, 2007. We would like to avoid unnecessary motion practice regarding these documents. Please let me know in writing by Friday, April 13 whether you will produce the documents that you are required to produce to Netflix under *Echostar*, as discussed above. Feel free to contact me with any questions at 415-391-5400.

Sincerely,



Dorothy R. McLaughlin

DRM

# **EXHIBIT 16**

LAW OFFICES  
**KEKER & VAN NEST**  
LLP

710 SANSOME STREET  
SAN FRANCISCO, CA 94111-1704  
TELEPHONE (415) 391-5400  
FAX (415) 397-7188  
WWW.KVN.COM

DOROTHY R. McLAUGHLIN  
DMCLAUGHLIN@KVN.COM

April 9, 2007

**VIA PDF & U.S. MAIL**

Edwin H. Taylor  
Blakely Sokoloff Taylor & Zafman LLP  
1279 Oakmead Parkway  
Sunnyvale, California 94085-4040

Re: *Netflix v. Blockbuster, Inc.*, Case No. C-06-2361 WHA

Dear Mr. Taylor:

Keker and Van Nest serves as counsel for Netflix. I write with regard to the subpoena that was served on you last Wednesday in the above-mentioned case.

Netflix sued Blockbuster in April 2006 for infringement of two of Netflix's patents: U.S. Patent No. 6,584,450 (the "'450 Patent") and U.S. Patent No. 7,024,381 (the "'381 Patent") (collectively "the patents in suit"). Netflix alleges, among other things, that Blockbuster has infringed and is infringing these patents willfully.

As a defense to Netflix's charge of willfulness, Blockbuster seeks to rely upon—and has produced to us—opinions of counsel regarding the '450 and '381 patents. Blockbuster has thus waived the attorney-client privilege and, to some extent, the work product protection that previously shielded from discovery documents related to these opinions. *See In re Echostar Commc'ns. Corp.*, 448 F.3d 1294, 1304 (Fed. Cir. 2006). Specifically, the Federal Circuit noted in *Echostar* that three categories of documents are relevant to waiver related to an advice-of-counsel defense:

1. documents that embody a communication between the attorney and client concerning the subject matter of the case, such as a traditional opinion letter;
2. documents analyzing the law, facts, trial strategy, and so forth that reflect the attorney's mental impressions but were not given to the client; and
3. documents that discuss a communication between attorney and client concerning the subject matter of the case but are not themselves communications to or from the client.



Edwin H. Taylor  
April 9, 2007  
Page 2

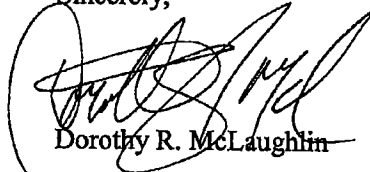
*See id.* at 1302 (citation omitted). The Federal Circuit held that upon assertion of the advice-of-counsel defense the attorney-client privilege and work product immunity are waived with regard to categories one and three above. *Id.* at 1304.

The state of the law with regard to the scope of the waiver articulated in *Echostar* may change, given the Federal Circuit's decision to rehear en banc *In re Seagate Technology, LLC*. Misc. No. 830, 2007 WL 196403, at \*1 (Fed. Cir. Jan. 26, 2007). The en banc ruling may either widen or narrow the scope of Blockbuster's waivers. The Federal Circuit's decision in *Echostar*, however, establishes the current state of the law and remains binding unless and until it is overturned by the Federal Circuit en banc. *Fed. Nat. 'l Mortgage Ass'n. v. United States*, 469 F.3d 968, 972 (Fed. Cir. 2006) ("A panel of this court is bound by prior precedential decisions unless and until overturned *en banc*." ) (quotation marks and citation omitted).

We intend to enforce the law as it currently exists and are therefore expecting production of documents described in categories one and three above. Additionally, we ask that you please preserve all documents described in category two because that information may become discoverable before this case is over.

Our deadline to file a motion to compel is April 19, 2007. We would like to avoid unnecessary motion practice regarding these documents. Please let me know in writing by Friday, April 13 whether you will produce the documents that you are required to produce to Netflix under *Echostar*, as discussed above. Feel free to contact me with any questions at 415-391-5400.

Sincerely,



Dorothy R. McLaughlin

DRM

# **EXHIBIT 17**

**NETFLIX, INC. V. BLOCKBUSTER, INC.**  
 USDC, Northern District of California  
 Case No. C 06 2361

**BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN  
 PRIVILEGE LOG**

DOC NO.	DATE	AUTHORS	RECIPIENTS	DESCRIPTION	PRIVILEGE
1	March 2007	Thomas Webster Ed Taylor Bill O'Brien	Thomas Webster Ed Taylor Bill O'Brien Conny Willesen	Various internal e-mail correspondence & attachments reflecting attorney mental impressions	Work product
2	n/a	n/a	n/a	Portions of prosecution history with attorney notes reflecting attorney mental impressions	Work product
3	n/a	n/a	n/a	Various prior art, with attorney notes reflecting attorney mental impressions	Work product
4	n/a	n/a	n/a	Markman Order, with attorney notes reflecting attorney mental impressions	Work product
5	n/a	n/a	n/a	Patent-in-suit, with attorney notes reflecting attorney mental impressions	Work product
6	n/a	n/a	n/a	Research/case law, which reflects attorney research concerning opinion letter to client	Work product
7	n/a	n/a	n/a	Attorney notes reflecting attorney mental impressions	Work product
8	n/a	n/a	n/a	Partial draft opinion reflecting attorney mental impressions	Work product

# **EXHIBIT 18**

**NETFLIX, INC. V. BLOCKBUSTER, INC.**  
 USDC, Northern District of California  
 Case No. C 06 2361

**BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN  
 AMENDED PRIVILEGE LOG**

DOC NO.	DATE	AUTHOR	RECIPIENT	CC	DESCRIPTION	PRIVILEGE
1.	3/27/07	Thomas Webster	Ed Taylor		Email communication reflecting Blakely attorney mental impressions.	WP
2.	3/27/07	Thomas Webster	Ed Taylor		Attachment-Draft opinion letter	WP
3.	3/27/07	Thomas Webster	Ed Taylor; Conny Willesen		Email communication reflecting Blakely attorney mental impressions	WP
4.	3/11/07	Thomas Webster	Ed Taylor		Email communication reflecting Blakely attorney mental impressions with attachment	WP
5.	3/10/07	Thomas Webster	Ed Taylor		Email communication reflecting Blakely attorney mental impressions	WP
6.	3/9/07	Thomas Webster	Ed Taylor		Email communication reflecting Blakely attorney mental impressions with attachment.	WP
7.	3/4/07	Thomas Webster	Ed Taylor		Email Chain - Communication reflecting Blakely attorney mental impressions	WP
8.	3/4/07	Thomas Webster	Ed Taylor		Email Chain - Communication reflecting Blakely attorney mental impressions	WP
9.	3/4/07	Thomas Webster	Ed Taylor		Email Chain - Communication reflecting Blakely attorney mental impressions	WP
10.	3/3/07	Thomas Webster	Ed Taylor		Email Chain - Communication reflecting Blakely attorney mental impressions	WP
11.	3/3/07	Thomas Webster	Ed Taylor		Email Chain - Communication reflecting Blakely attorney mental impressions	WP
12.	3/3/07	Bill O'Brien	Ed Taylor		Email communication re patent-in-suit	AC; WP
13.	n/a	Ed Taylor			Portions of prosecution history of patent-in-suit with Blakely attorney notes reflecting Blakely attorney mental impressions.	WP
14.	n/a	Ed Taylor			Various prior art, with Blakely attorney notes reflecting Blakely attorney mental impressions	WP
15.	n/a	Ed Taylor			Markman Order, with Blakely attorney notes reflecting Blakely attorney mental impressions	WP
16.	n/a	Ed Taylor			Patent-in-suit, with Blakely attorney notes reflecting Blakely attorney mental impressions	WP

**NETFLIX, INC. V. BLOCKBUSTER, INC.**  
 USDC, Northern District of California  
 Case No. C 06 2361

**BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN  
 AMENDED PRIVILEGE LOG**

DOC NO.	DATE	AUTHOR	RECIPIENT	CC	DESCRIPTION	PRIVILEGE
17.	n/a	Ed Taylor			Research/case law reflecting Blakely attorney work product	WP
18.	n/a	Ed Taylor			Blakely attorney notes reflecting Blakely attorney mental impressions	WP

# EXHIBIT 19

**NETFLIX, INC. v. BLOCKBUSTER INC.**  
 USDC, Northern District of California  
 Case No. C 06 2361

**BAKER BOTTS LLP  
 PRIVILEGE AND REDACTION LOG**

DOC NO.	DATE	AUTHORS	RECIPIENTS	DESCRIPTION	PRIVILEGE
1	6/26/03	Rich Frank of Blockbuster Inc.	Bart Showalter of Baker Botts	Attorney-client email reflecting intellectual property counseling concerning Netflix patent	AC/WP
2	7/15/03	Kurt Pankratz of Baker Botts	Bart Showalter and Larry Carlson of Baker Botts	Internal Baker Botts email and attachment reflecting attorney mental impressions	WP
3	July and August 2003	Kurt Pankratz of Baker Botts		Uncommunicated work product reflecting attorney mental impressions	WP
4	8/19/03	Kurt Pankratz of Baker Botts	Thomas Frame of Baker Botts	Redaction of top part of BAKER00000013, Internal Baker Botts email reflecting attorney mental impressions.	WP
5	8/29/03	Bart Showalter of Baker Botts	Kurt Pankratz and Thomas Frame of Baker Botts	Internal Baker Botts email reflecting attorney mental impressions	WP
6	4/6/06	Bart Showalter of Baker Botts	Judy Norris of Blockbuster	Attorney-client email exchange reflecting legal advice unrelated to opinion of counsel rendered	AC/WP
7	4/6/06	Bart Showalter of Baker Botts	Kurt Pankratz of Baker Botts	Internal Baker Botts email reflecting attorney mental impressions	AC/WP
8	4/28/06	Dolores Skinner, Landon IP	Bart Showalter of Baker Botts	Email reflecting attorney mental impressions	AC/WP
9	4/28/06	Bart Showalter of Baker Botts	Kurt Pankratz and David Taylor of Baker Botts	Internal Baker Botts email reflecting attorney mental impressions	AC/WP
10	5/9/06	David Taylor of Baker Botts	Kurt Pankratz of Baker Botts	Internal Baker Botts email reflecting attorney mental impressions	AC/WP



DOC NO.	DATE	AUTHORS	RECIPIENTS	DESCRIPTION	PRIVILEGE
11	5/10/06	Kurt Pankratz of Baker Botts	Bart Showalter of Baker Botts	Internal Baker Botts email reflecting attorney mental impressions	AC/WP
12	5/12/06	Kurt Pankratz of Baker Botts	Bart Showalter of Baker Botts	Internal Baker Botts email reflecting attorney mental impressions	AC/WP
13	8/28/06	Bart Showalter of Baker Botts	Doug Floyd of Blockbuster	Attorney-client email reflecting legal advice unrelated to opinion of counsel rendered	AC/WP
14	8/31/06	Bart Showalter of Baker Botts	Doug Floyd of Blockbuster	Attorney-client email reflecting legal advice unrelated to opinion of counsel rendered	AC/WP
15	undated	Kurt Pankratz of Baker Botts	n/a	Portion of internal draft memorandum uncommunicated to Blockbuster reflecting attorney mental impressions	AC/WP
16	undated	Bart Showalter of Baker Botts	n/a	Copy of document with hand written attorney notes reflecting attorney mental impressions	WP

# **EXHIBIT 20**

**NETFLIX, INC. V. BLOCKBUSTER, INC.**  
 USDC, Northern District of California  
 Case No. C 06 2361

**ALSCHULER GROSSMAN LLP  
 PRIVILEGE LOG**

DOC NO.	PARTICIPANTS	DESCRIPTION	PRIVILEGE
1.	AG/BBI	Communications between Alschuler Grossman ("AG") and Blockbuster, Inc. ("BBI") regarding opinions relating to invalidity provided by Baker Botts LLP ("Baker Botts") containing or requesting AG legal advice and/or reflecting AG attorney mental impressions	AC; WP
2.	AG/Baker Botts	Communications between AG and Baker Botts regarding opinions relating to invalidity reflecting AG attorney mental impressions	AC
3.	AG/BBI	Communications between AG and BBI regarding opinions relating to invalidity provided by Blakely, Sokoloff, Taylor & Zafman, LLP ("Blakely") containing or requesting AG legal advice and/or reflecting attorney mental impressions	AC; WP
4.	AG/Blakely	Communications between AG and Blakely regarding opinions relating to invalidity reflecting AG attorney mental impressions and/or containing BBI confidential information	AC
5.	AG	Internal AG communications regarding opinions of Baker Botts or Blakely related to invalidity reflecting AG attorney mental impressions	WP
6.	AG/BBI	Communications between AG and BBI regarding various litigation defenses in connection with invalidity of the patents-in-suit containing or requesting AG legal advice and/or reflecting AG attorney mental impressions	AC; WP
7.	AG	Various internal AG memoranda, notes, and documents related to litigation defenses in connection with invalidity of the patents-in-suit reflecting AG attorney mental impressions	WP

SF21710301.9/3006338-0000325413

1

**NETFLIX, INC. V. BLOCKBUSTER, INC.**  
 USDC, Northern District of California  
 Case No. C 06 2361

**ALSCHULER GROSSMAN LLP  
 PRIVILEGE LOG**

DOC NO.	PARTICIPANTS	DESCRIPTION	PRIVILEGE
8.	AG/BBI	Communications between AG and BBI regarding preliminary invalidity contentions containing or requesting AG legal advice and/or reflecting AG attorney mental impressions	AC; WP
9.	AG	Internal AG communications regarding preliminary invalidity contentions reflecting AG attorney mental impressions	WP
10.	AG	Various AG internal memoranda, notes, and documents related to preliminary invalidity contentions reflecting AG attorney mental impressions	WP
11.	AG/BBI	Communications between AG and BBI regarding answers and counterclaims containing or requesting AG legal advice and/or reflecting AG attorney mental impressions	AC; WP
12.	AG	Internal AG communications regarding answer and counterclaims reflecting AG attorney mental impressions	WP
13.	AG	Various internal AG memoranda, notes, and documents related to answer and counterclaims reflecting AG attorney mental impressions	WP
14.	AG/BBI	Communications between AG and BBI regarding briefing on motion to dismiss inequitable conduct and counterclaims containing or requesting AG legal advice and/or reflecting AG attorney mental impressions	AC; WP
15.	AG	Internal AG communications regarding briefing on motion to dismiss inequitable conduct and counterclaims reflecting AG attorney mental impressions	WP

SF21710301.975006338-00000325413

**NETFLIX, INC. V. BLOCKBUSTER, INC.**  
 USDC, Northern District of California  
 Case No. C 06 2361

**ALSCHULER GROSSMAN LLP  
 PRIVILEGE LOG**

DOC NO.	PARTICIPANTS	DESCRIPTION	PRIVILEGE
16.	AG	Various AG internal memoranda, notes, and documents related to briefing on motion to dismiss inequitable conduct and counterclaims reflecting AG attorney mental impressions	WP
17.	AG/BBI	Communications between AG and BBI regarding prior art search firms containing or requesting AG legal advice and/or reflecting AG attorney mental impressions	AC; WP
18.	AG	Internal AG communications regarding prior art search firms reflecting AG attorney mental impressions.	WP
19.	AG/Prior Art Search Firms	Communications between AG and prior art search firms reflecting AG attorney mental impressions	WP
20.	AG	Various internal AG memoranda, notes, and documents related to prior art search firms reflecting AG attorney mental impressions	WP
21.	AG/BBI	Communications between AG and BBI regarding prior art consultants and investigators containing or requesting AG legal advice and/or reflecting AG attorney mental impressions	AC; WP
22.	AG	Internal AG communications regarding prior art consultants and investigators reflecting AG attorney mental impressions	WP
23.	AG/Prior Art Consultants and Investigators	Communications between AG and prior art consultants and investigators reflecting AG attorney mental impressions	WP
24.	AG	Drafts of various internal AG memoranda and notes related to prior art consultants and investigators reflecting AG attorney mental impressions	WP

SF21710301.9/3006338-0000325413

3

**NETFLIX, INC. V. BLOCKBUSTER, INC.**  
 USDC, Northern District of California  
 Case No. C 06 2361

**ALSCHULER GROSSMAN LLP  
 PRIVILEGE LOG**

DOC NO.	PARTICIPANTS	DESCRIPTION	PRIVILEGE
25.	AG/BBI	Communications between AG and BBI regarding prior art in connection with invalidity of the patents-in-suit containing or requesting AG legal advice and/or reflecting AG attorney mental impressions	AC; WP
26.	AG	Internal AG communications regarding prior art in connection with invalidity of the patents-in-suit reflecting AG attorney mental impressions.	WP
27.	AG	Various internal AG memoranda, notes, and documents related to prior art in connection with invalidity of the patents-in-suit reflecting AG attorney mental impressions	WP
28.	AG	Internal AG communications regarding final invalidity contentions reflecting AG attorney mental impressions	WP
29.	AG/BBI	Communications between AG and BBI regarding depositions of and information about current and former Netflix, Inc. ("Netflix") employees in connection with invalidity of the patents-in-suit containing or requesting AG legal advice and/or reflecting AG attorney mental impressions	AC; WP
30.	AG	Internal AG communications regarding depositions of and information about current and former Netflix employees in connection with invalidity of the patents-in-suit reflecting AG attorney mental impressions	WP
31.	AG	Various internal AG memoranda, notes, and documents related to depositions of and information about current and former Netflix employees in connection with invalidity of the patents-in-suit reflecting AG attorney mental impressions	WP

SF721710301 9/3006338-0000325413

4

**NETFLIX, INC. V. BLOCKBUSTER, INC.**  
 USDC, Northern District of California  
 Case No. C 06 2361

**ALSCHULER GROSSMAN LLP  
 PRIVILEGE LOG**

DOC NO.	PARTICIPANTS	DESCRIPTION	PRIVILEGE
32.	AG/BBI	Communications between AG and BBI regarding depositions of and information about third parties in connection with invalidity of the patents-in-suit containing or requesting AG legal advice and/or reflecting AG attorney mental impressions	AC; WP
33.	AG	Internal AG communications regarding depositions of and information about third parties in connection with invalidity of the patents-in-suit reflecting AG attorney mental impressions	WP
34.	AG	Various internal AG memoranda, notes, and documents related to depositions of and information about third parties in connection with invalidity of the patents-in-suit reflecting AG attorney mental impressions.	WP
35.	AG/BBI	Communications between AG and BBI regarding depositions of and information about current and former BBI employees in connection with invalidity of the patents-in-suit containing or requesting AG legal advice and/or reflecting AG attorney mental impressions	AC; WP
36.	AG	Internal AG communications regarding depositions of and information about current and former BBI employees in connection with invalidity of the patents-in-suit reflecting AG attorney mental impressions	WP
37.	AG	Various internal AG memoranda, notes, and documents related to depositions of and information about current and former BBI employees in connection with invalidity of the patents-in-suit reflecting AG attorney mental impressions	WP

SF21710301.9/3006338-0000325413

5

**NETFLIX, INC. V. BLOCKBUSTER, INC.**  
 USDC, Northern District of California  
 Case No. C 06 2361

**ALSCHULER GROSSMAN LLP  
 PRIVILEGE LOG**

DOC NO.	PARTICIPANTS	DESCRIPTION	PRIVILEGE
38.	AG/BBI	Communications between AG and BBI regarding discovery requests and responses in connection with invalidity of the patents-in-suit containing or requesting AG legal advice and/or reflecting AG attorney mental impressions	AC; WP
39.	AG	Internal AG communications regarding discovery requests and responses in connection with invalidity of the patents-in-suit reflecting AG attorney mental impressions	WP
40.	AG	Various internal AG memoranda, notes, and documents related to discovery requests and responses in connection with invalidity of the patents-in-suit reflecting AG attorney mental impressions	WP
41.	AG/BBI	Communications between AG and BBI regarding interviews of current and former BBI employees in connection with invalidity of the patents-in-suit containing or requesting AG legal advice and/or reflecting AG attorney mental impressions	AC; WP
42.	AG	Internal AG communications regarding interviews of current and former BBI employees in connection with invalidity of the patents-in-suit reflecting AG attorney mental impressions	WP
43.	AG	Various internal AG memoranda, notes, and documents related to interviews of current and former BBI employees in connection with invalidity of the patents-in-suit reflecting AG attorney mental impressions	WP
44.	AG/BBI	Communications between AG and BBI regarding experts related to invalidity of the patents-in-suit containing or requesting AG legal advice and/or reflecting AG attorney mental impressions	AC; WP

SF/Z1710301.9/3006338-0000325413

6



**NETFLIX, INC. V. BLOCKBUSTER, INC.**  
 USDC, Northern District of California  
 Case No. C 06 2361

**ALSCHULER GROSSMAN LLP  
 PRIVILEGE LOG**

DOC NO.	PARTICIPANTS	DESCRIPTION	PRIVILEGE
45.	AG	Internal AG communications regarding experts related to invalidity of the patents-in-suit reflecting AG attorney mental impressions	WP
46.	AG	Various internal AG memoranda, notes, and documents regarding experts related to invalidity of the patents-in-suit reflecting AG attorney mental impressions	WP

SF21710301.9/3006338-0000325413

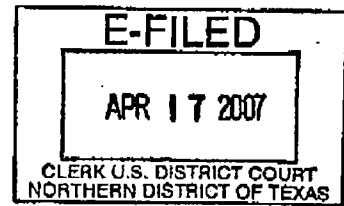
7

# **EXHIBIT 21**

Received 04/17/2007 01:31PM in 01:48 on line [2] for MR1193 \* Pg 2/6  
 04/17/2007 13:31 FAX 2147532407 MAG. JUDGE KAPLAN

002

IN THE UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF TEXAS  
 DALLAS DIVISION



NETFLIX, INC.

Plaintiff,

VS.

BLOCKBUSTER, INC.

Defendant.

§  
§  
§  
§  
§  
§  
§  
§

NO. 3-07-MC-0036-K

**ORDER**

Blockbuster, Inc., for itself and three of its current or former employees, has filed a motion for protective in connection with certain deposition notices and subpoenas served by Netflix, Inc.<sup>1</sup> At issue are depositions in a patent infringement case pending in California federal court which are scheduled to take place in Dallas, Texas during the weeks of April 9 & 16, 2007. According to Blockbuster, Netflix is using these depositions to invade the attorney-client privilege and force the disclosure of privileged communications. As an example of this improper motive, Blockbuster points to the deposition of one of its in-house attorneys, Bryan Stevenson, taken on April 10, 2007. At that deposition, counsel for Netflix asked Stevenson: (1) whether Blockbuster retained all of its communications regarding the validity or invalidity of the patents-in-suit; (2) whether Blockbuster received any written documents from its trial counsel regarding the validity or invalidity of the patents-in-suit; and (3) whether Stevenson discussed the validity or invalidity of the patents with trial counsel prior to the deposition. (*See* Mot., Exh. D). Counsel objected to each question based on the

<sup>1</sup> The Blockbuster employees noticed for depositions are: (1) Edward B. Stead, former Executive Vice-President and General Counsel; (2) Shane Evangelist, current Senior Vice-President, and (3) Richard Allen Frank, former Vice-President. In addition, Netflix has served a Rule 30(b)(6) deposition notice on Blockbuster, who has designated Evangelist and Bryan Stevenson, one of its in-house lawyers, as corporate representatives.

Received 04/17/2007 01:31PM in 01:48 on line 121 for MR1193 \* Pg 3/6  
04/17/2007 13:32 FAX 2147532407 MAG. JUDGE KAPLAN

003

attorney-client privilege and instructed Stevenson not to answer. (*Id.*). In addition, Netflix has served a subpoena duces tecum on the law firm of Alschuler Grossman, LP, Blockbuster's trial counsel, seeking, *inter alia*, "[a]ll communications between Alschuler and Blockbuster regarding the validity or invalidity of any claim of either of the patents-in-suit." (*Id.*, Exh. B-5).<sup>2</sup> Although Blockbuster recognizes that a limited waiver of the privilege has occurred because it asserts an "advice of counsel" defense to Netflix's claim of willful infringement, it contends that Netflix is attempting to turn that limited waiver into a wholesale waiver of the privilege as to communications with trial counsel. By this motion, Blockbuster and its witnesses seek an order relieving them of any duty to answer questions or produce documents that would divulge privileged communications with trial counsel.

The court notes that the issue of whether a party waives the attorney-client privilege as to communications with trial counsel by relying on an "advice of counsel" defense to willful infringement is currently pending before the Court of Appeals for the Federal Circuit. *In re Seagate Technology, LLC*, Misc. No. 830, 2007 WL 196403 (Fed. Cir. Jan. 26, 2007). Blockbuster suggests, at a minimum, that the court should stay any discovery on this subject until *Seagate Technology* is decided. The court is inclined to agree, but is not inclined to prevent Netflix from deposing witnesses on issues that do not require Blockbuster to disclose privileged communications with trial counsel. Should the Federal Circuit ultimately decide that the assertion of an "advice of counsel" defense waives the attorney-client privilege as to communications with trial counsel, Netflix would be permitted to re-depose these witnesses as to such communications.

---

<sup>2</sup> A similar request appears in the Rule 30(b)(6) deposition notice to Blockbuster made the basis of this motion. (*See* Mot., Exh. B-4).

Received 04/17/2007 01:31PM in 01:48 on line [2] for MR1193 \* Pg 4/6  
04/17/2007 13:32 FAX 2147532407 MAG. JUDGE KAPLAN

004

However, before any ruling is made on the motion, the court desires briefing from the parties as to whether this discovery dispute should be resolved by the presiding judge in the underlying litigation. While this court clearly has authority to rule on the motion for protective order as to the Rule 45 subpoena served on Richard Allen Frank, which was issued by the clerk of the Northern District of Texas, the same is not necessarily true as to the subpoena served on Edward B. Stead and the deposition notices to Shane Evangelist and Blockbuster--all of which were issued by or under the authority of the United States District Court for the Northern District of California. Although Blockbuster contends that this court has authority to hear this motion pursuant to Fed. R. Civ. P. 26(c) and 30(d)(4), the importance of this threshold jurisdictional issue warrants further briefing by both parties.

With these observations in mind, the attorneys are directed to make one final attempt to resolve this discovery dispute by agreement. The following orders are hereby entered to facilitate the prompt and efficient disposition of this matter:

1. Counsel shall meet face-to-face or confer by telephone in an attempt to resolve all matters in dispute. This conference shall be held by April 23, 2007. Any attorney who fails to participate in this conference or negotiate in good faith will be subject to sanctions.

2. The parties shall file a joint status report by April 25, 2007. This report must contain the following information: (a) the names of the attorneys who participated in the conference; (b) the date the conference was held and the amount of time the parties conferred; (c) the matters that were resolved by agreement; (d) the specific matters that need to be heard and determined; and (e) a detailed explanation of the reasons why agreement could not be reached as to those matters. As part of their joint status report, the parties shall fully brief the issue of whether this court has jurisdiction to grant a protective order in connection with the depositions of Edward B. Stead, Shane Evangelist

Received 04/17/2007 01:31PM in 01:48 on line [2] for MR1193 \* Pg 5/6  
04/17/2007 13:32 FAX 2147532407 MAG. JUDGE KAPLAN

005

and Blockbuster, and, if so, whether the court should exercise its discretion in favor of having the presiding judge in the underlying lawsuit decide the motion.<sup>3</sup> The joint status report must be signed by all participating attorneys. Any attorney who fails to sign the report will be subject to sanctions.

The purpose of a joint status report is to enable the court to determine the respective positions of each party regarding the subject matter of a discovery dispute. To this end, the parties should present their arguments and authorities in the body of the report. Supporting evidence and affidavits may be submitted in a separate appendix. If further briefing is desired before any unresolved matters are set for a hearing, the joint status report must indicate why the party requesting further briefing could not fully present its arguments and authorities in the report. The court, in its discretion, may allow further briefing upon request by any party.

The joint status report must be filed electronically in accordance with Miscellaneous Order 61, the CM/ECF Civil and Administrative Procedures Manual, and the CM/ECF User Guide. A hard copy of the joint status report and any supporting materials shall be *hand delivered* to the chambers of magistrate judge on the same day.

3. The parties shall submit an agreed order in lieu of a joint status report if this discovery dispute is resolved. An agreed order, signed by all counsel of record, must be submitted electronically to Kaplan\_Orders@txnd.uscourts.gov by April 25, 2007. A hard copy of the signed agreed order must be *hand delivered* to the chambers of magistrate judge on the same day.

4. The court intends to rule on any unresolved issues based on the written submissions of the parties, including the joint status report. *See* N.D. Tex. LCivR 7.1(g) ("Unless otherwise directed by the presiding judge, oral argument on a motion will not be held."). However, the court,

---

<sup>3</sup> The court is also curious as to whether the Alschuler firm has filed a motion to quash the Rule 45 subpoena served by Netflix and, if so, the status of that motion.

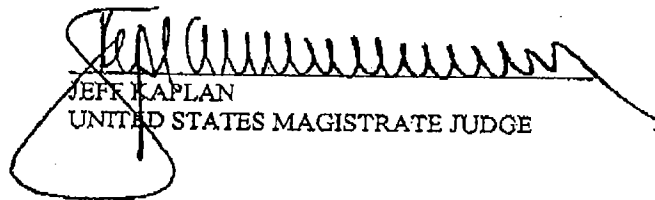
Received 04/17/2007 01:31PM in 01:48 on line [2] for MR1193 \* Pg 6/6  
04/17/2007 13:32 FAX 2147532407 MAG. JUDGE KAPLAN

008

in its discretion or upon the request of any party, may schedule oral argument prior to ruling on the motion.

SO ORDERED.

DATED: April 17, 2007.

  
JEFF KAPLAN  
UNITED STATES MAGISTRATE JUDGE